

REMARKS

The Examiner is thanked for the thorough examination of the present application. The Office Action, however, tentatively rejected all claims. In response, Applicant submits the foregoing amendments and the following remarks. Specifically, claims 7, 9-11, and 13 have been amended, and claims 1-6 are cancelled. After entry of the foregoing amendments, claims 7-18 remain pending in the application. Applicant submits that no new matter is added by these amendments, and respectfully requests that the rejections be reconsidered and withdrawn.

Rejections under 35 U.S.C. § 101

Claims 1-12 were rejected under 35 U.S.C. § 101. Claims 1-6 have been cancelled, thereby rendering the rejections of those claims moot. Claim 7 has been amended to be tied to a particular machine having a plurality of subsystems with interactions, and therefore overcomes the rejections under 35 U.S.C. 101. The application discloses a system with a plurality of modules with connections and interactions in Fig. 1 and corresponding descriptions, therefore, the amendments satisfy 35 U.S.C. § 112, first paragraph, and do not add new matter to the application.

As amended herein, claim 7 recites:

7. A method for balancing production capacity between different production technologies for use in an electronic device having a plurality of subsystems, comprising the steps of:
receiving a first order by a first subsystem;
generating a dummy order corresponding to the first order by the first subsystem;

notifying a second subsystem of the first order and the dummy order by the first subsystem;
reserving a first capacity of a first production technology for the first order and a second capacity of a second production technology for the dummy order by the second subsystem;
when a second order requesting the first production technology is received by the first subsystem, notifying a third subsystem of the second order by the first subsystem;
canceling the first order and directing the dummy order to substitute the first order by the third subsystem; and
triggering the second subsystem to release the first capacity originally reserved for the first order to fulfill the second order by the third subsystem.

As the U.S. Court of Appeals for the Federal Circuit recently confirmed in its *In re*

Bilski 545 F.3d 943, 88 U.S.P.Q.2d 1385 (2008) decision:

“... we ... reaffirm that the machine-or-transformation test ... is the governing test for determining patent eligibility of a process under 35 U.S.C. § 101.

...
The machine-or-transformation test is a two-branched inquiry; an applicant may show that a process claim satisfies § 101 either by showing that his claim is tied to a particular machine, or by showing that his claim transforms an article.

The Court further stated:

In *AT&T*, we rejected a "physical limitations" test and noted that "the mere fact that a claimed invention involves inputting numbers, calculating numbers, outputting numbers, and storing numbers, in and of itself, would not render it nonstatutory subject matter." 172 F.3d at 1359 (*quoting State St.*, 149 F.3d at 1374). The same reasoning applies when the claim at issue recites fundamental principles other than mathematical algorithms. Thus, the proper inquiry under § 101 is ... whether the claim meets the machine-or-transformation test. As a result, ... a claim that purportedly lacks any "physical steps" but is still tied to a machine or achieves an eligible transformation passes muster under § 101.

Claim 7 of the present application, as amended herein, clearly satisfies these legal standards, and therefore the rejection of claim 7 should be withdrawn.

Discussion of Rejections under 35 U.S.C 102(e)

Claims 1-4, 7-11, and 13-16 stand rejected under 35 U.S.C 102(e) as allegedly being anticipated by Wang et al., U.S. Patent Application Publication No. 2005/0038684. Applicant respectfully requests reconsideration and withdrawal of these rejections. In fact, the claim amendments render these rejections moot. Notwithstanding, Applicant submits the following distinguishing remarks.

With regard to claims 7 and 13, Wang does not teach or suggest the claimed combinations. In this regard, Wang fails to disclose, suggest, or teach, inter alia, the following feature recited by above claims of the present application:

“generating a dummy order corresponding to the first order”;
“reserving a first capacity of a first production technology for the first order and ***a second capacity of a second production technology for the dummy order”;***
“canceling the first order and directing the dummy order to substitute the first order if a second order requesting the first production technology is received”; and
“releasing the first capacity originally reserved for the first order to fulfill the second order”.

Paragraph [0033] of Wang states: “...The system includes an allocation planning module, *an order management module*, a capacity model, and a capacity management module”, and [0042] of the Wang reference is read “In addition, the order management module 122 *receives the purchase order 113 for the product from the customer 111, and arranges capacity to meet customer demand...*”. In this regard, *Wang only relevantly discloses reception of an order, and arrangement of capacity for the order.* In the

claimed embodiments, however, ***when an order is received, a corresponding dummy order with a different production technology is generated for the received order.***

Nowhere does Wang disclose the claimed feature of generating a dummy order corresponding to the first order.

Paragraph [0034] of Wang states: “The allocation planning module *receives a demand plan* for a product from a participating customer. The capacity management module transforms the demand plan into a machine-time-based plan according to the route information in the capacity model, and *reserves capacity according to the machine-time-based plan for the demand plan*”. In contrast, *Wang only relevantly discloses the capacity reservation for a demand plan*. In the claimed embodiments, however, ***capacity with different production technologies are respectively reserved, wherein a first capacity of a first production technology is reserved for the first order and a second capacity of a second production technology is reserved for the dummy order.*** Nowhere does Wang disclose the claimed feature of reserving a first capacity of a first production technology for the first order and a second capacity of a second production technology for the dummy order.

In addition, paragraph [0035] of Wang states: “The order management module receives a purchase order for the product from a participating customer before a cutoff date, and the capacity management module rejects an order sent from other customers before the cutoff date. The capacity management module transforms the purchase order into a machine-time-based order according to the route information in the capacity model,

accepts the machine-time-based order and decreases the reservation capacity depending on the machine-time-based plan”. Applicant submits, however, that Wang only relevantly discloses that a participating customer can transmit a purchase order before the cutoff date, and other clients cannot transmit orders before the cutoff date. Further still, Wang only relevantly discloses when the machine-time-based order is accepted, the reservation capacity is therefore decreased. In the claimed invention, however, *when a second order requesting a first production technology is received, the first order is cancelled, and the first capacity originally reserved for the first order is released to fulfill the second order. Additionally, the dummy order is directed to substitute the first order. That is, the second order is manufactured using the first capacity with the first production technology, and the first order replaced by the dummy order is manufactured using the second capacity with the second production technology.* Nowhere does Wang disclose the claimed feature of canceling the first order and directing the dummy order to substitute the first order if a second order requesting the first production technology is received, and releasing the first capacity originally reserved for the first order to fulfill the second order.

For at least the foregoing reasons, Wang fails to teach the claimed features defined in independent claims 7 and 13, and the rejections of claims 7 and 13 should be withdrawn. Insofar as claims 8-12 depend from claim 7 and claims 14-18 depend from claim 13, these claims are similarly patentable. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d

1596, 1600 (Fed. Cir. 1988). Further, the various dependent claims are also patentable based on their own features.

Conclusion

In view of the foregoing, it is believed that all pending claims are in proper condition for allowance. If the Examiner believes that a telephone conference would expedite the examination of the above-identified patent application, the Examiner is invited to call the undersigned.

No fee is believed to be due in connection with this amendment and response to Office Action. If, however, any fee is believed to be due, you are hereby authorized to charge any such fee to deposit account No. 20-0778.

Respectfully submitted,

/Daniel R. McClure/

By:

Daniel R. McClure
Registration No. 38,962

Thomas, Kayden, Horstemeyer & Risley, LLP
600 Galleria Pkwy, SE
Suite 1500
Atlanta, GA 30339
770-933-9500